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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

DAVID STEBBINS,

PLAINTIFF

VS.

Case 3:21-cv-04184-JSW

KARL POLANO, et al

DEFENDANTS

MOTION FOR LEAVE TO CONDUCT SERVICE OF
PROCESS BY EMAIL AS TO KARL POLANO

1. Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Motion for Leave to Conduct Service of Process on Karl Polano by email.
2. On January 25, 2021, the Swiss Government returned service of process unexecuted pursuant to the Hague Convention. Despite two attempts at service, service was not made. The official reason given is that “According to the feedback from the Swiss post office, the recipient did not collect the documents.” See **Doc. 101**. Some countries do not deliver mail personally. Many countries treat mail like we (in America) treat pizza: You can go there and pick it up yourself for no extra charge, or you can pay extra for the cost of having it delivered to your door. Apparently, Switzerland is such a country.
3. Polano knew that these papers were coming. He knew that he was being sued, and he knew that the papers had arrived with the Swiss government. See **Exhibit A**. He has no excuse for not collecting the documents. His only excuse is that he intentionally wanted to evade service

of process.

4. It is an exercise in futility to attempt to serve process again. All we can reasonably expect is a repeat of what has happened here. The definition of insanity is doing the same thing over and over again and expecting different results. It is clear at this point that some alternative means of service of process will be required.

5. Switzerland has objected to every other method of service under the Hague Convention. See <https://www.haguelawblog.com/2017/01/serve-process-switzerland/> (“**Article 10 alternative methods** Aren’t available. Switzerland objects to them all. Article 5 is the only way”).

6. This means that we have no choice but to use one of the Court's “methods of last resort” (or MLR, for short) for service of process. Most MLR service is only allowed when all other avenues have been exhausted¹. But in the case of service in Switzerland, there is only one avenue to exhaust, and that avenue has been exhausted.

7. This court has wide discretion to order service be made by any means not prohibited by internationally law. See Fed.R.Civ.P. 4(f)(3). The Ninth Circuit has affirmed a district court's discretion to authorize service of process by email. See *Rio Properties, Inc. v. Rio Intern.*

Interlink, 284 F. 3d 1007 (9th Cir. 2002):

“Courts ... cannot be blind to changes and advances in technology. No longer do we live in a world where communications are conducted solely by mail carried by fast sailing clipper ... ships. Electronic communication via satellite can and does provide instantaneous transmission of notice and information. No longer must process be mailed to a defendant's door when he can receive complete notice at an electronic terminal inside his very office, even when the door is steel and bolted shut.” See *id* at 1017.

¹ Although that is not strictly required by law. The Court can authorize MLR service whenever it wants. See *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F. 3d 1007, 1015 (9th Cir. 2002) (“Rule 4(f)(3) includes no qualifiers or limitations which indicate its availability only after attempting service of process by other means”).

8. I would like permission to conduct service of process by email. Polano regularly checks his email and even routinely responds to email correspondence from me. See **Exhibit B**. Also, many attorneys and legal scholars advocate service of process by email or by social media, as it has a much greater likelihood of actually apprising the defendant of the action, unlike publication in the newspaper (the traditional MLR service). See <http://www.vikinglaw.us/2016/06/23/electronic-service-of-process-abroad/>. See also <https://www.haguelawblog.com/2018/08/twitter-service-hits-bigtime/>. See also http://abtl.org/report/la/articles/David_Faud_abtl_Reprint.pdf.

9. If this court grants this motion, I will send a copy of this motion (with all attachments), a copy of **Doc. 101** in this case, a copy of the court's order granting this motion, a copy of the second² amended complaint (the current operative complaint), and a copy of **Doc. 23** (Summons Issued as to Karl Polano) as email attachments to Karl Polano at his email address of sofiannp@hotmail.com. I will then provide a copy of that email as an exhibit in a filing in this court, in order to prove to the Court the date of service.

10. One last thing: Since we are now conducting service of process by other means, I believe it would now be prudent to issue a ruling on my currently-pending Motions for Leave to File Amended Complaint (**Docs. 71, 73, and 100**). Previously, the court wanted to defer ruling on that motion so we did not delay the case further by requiring additional service of process under the Hague Convention. But here? If we're doing service of process by email, adding an amended complaint would not result in any delay of service, since service is already instantaneous to begin with, meaning the time it would take to execute service would effectively be multiplied by zero. As a result, I believe the Court should go ahead and rule on my Motions for Leave to Amend,

2 Or third, depending on whether the Court grants **Doc. 71** and/or **Doc. 100**

since there is no longer any justifiable reason to defer ruling. A separate supplement to those two motions will be filed forthwith.

11. Wherefore, premises considered, I respectfully request leave to conduct service of process via email. So requested on this, the 25th day of January, 2022.

/s/ David Stebbins
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